No. 85-794

Supreme Court, U.S.
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In The
Supreme Court of the United States
October Term, 1985

PREUIT & MAULDIN, a partnership; and E. F. MAULDIN, individually and as Executor of estate of Leonard Preuit, deceased; and PREUIT MAULDIN,

Petitioners,

v.

SAMUEL JONES, JR.,

Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit

BRIEF OF ASSOCIATED INDUSTRIES OF ALABAMA AS AMICUS CURIAE IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

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CONSENT

This brief is filed with the written consent of all parties, such consent being on file with the Clerk of this Court.

INTEREST OF AMICUS CURIAE

Associated Industries of Alabama ("AIA")[1] is a voluntary association consisting of approximately 2200 business organizations, ranging from those with 2 employees to those with nearly 30,000 employees.

The Eleventh Circuit's holding that §1983 lawsuits are to be treated under the 6-year trespass statute of limitations[2] is of concern to AIA because of the potential expansion of the holding to lawsuits under §1981. Virtually all lawsuits filed in the Federal Courts in Alabama alleging race discrimination in employment are tandem

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[1] By recent merger with the Alabama Chamber of Commerce, AIA is now known as The Business Council of Alabama.

[2] Jones v. Preuit & Mauldin, 763 F.2d 1250 (11th Cir. 1985).

Title VII-§1981 cases.[3/] If Preuit & Mauldin remains the law and is extended to §1981, the Title VII aspects of cases will be subject to the time limits embodied in such statute, while the §1981 aspects would be open for up to 6 years. Defendants would then be subjected to the substantial hardship of defending themselves against allegations concerning long-ago events.

THE DECISION BELOW

Illustrating that cases with far-reaching consequences may have humble origins, this case originated as a lawsuit alleging that issuance of writs of attachment without a hearing had resulted in the attachment of cotton pickers allegedly in violation of due

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[3/] Title VII of the Civil Rights Act of 1964, as amended in 1972. 42 U.S.C. §2000e et seq.

process rights. The then 1-year (now 2-year) statute of limitations for actions for any injury to the person or rights of another[4] was applied by the District Court in accordance with the then settled application of such statute to §1983 and §1981 lawsuits. The Eleventh Circuit reversed, holding that the statute of limitations to be applied to §1983 actions is the 6-year period governing trespass actions.[5]

Neither in the District Court nor in the Court of Appeals did anyone argue for application of the 6-year trespass statute. Instead, the plaintiff argued for application of a 3-year statute governing actions on attachment bonds. That argument was rejected

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[4] Ala. Code §6-2-39(a)(5), recodified as §6-2-38(1) in January 1985 when extended to 2 years.

[5] Ala. Code §6-2-34.

by the District Court and was not commented on by the Court of Appeals. The selection of the 6-year trespass statute of limitations was accordingly the product of the Court of Appeals alone.[6/]

[6/]The Court was entitled to decide the case on a ground not briefed or argued, but it is equally true that:

> "The basic premise of common-law jurisprudence is the view that the best and surest way of ascertaining the truth and arriving at a just result is to have an impartial tribunal make its decision after first hearing the opposing parties present their conflicting contentions in the strongest and most forceful way.
>
> "The corollary of that premise is that where the opposing positions are not strongly or argumentatively presented, the tribunal may well fail to ascertain the truth and reach a sound result, and may be led into egregious error." Wiener, Briefing and Arguing Federal Appeals, pp. 12-13 (1961).

SUMMARY OF ARGUMENT

In holding that the statute of limitations for §1983 cases is the 6-year Alabama trespass statute, and not the 1-year (now 2-year) statute governing general remedies for injuries to the person or rights of another, the Eleventh Circuit not only departed from the Supreme Court's teaching only two months earlier in the Wilson case[2/] but further set the stage for application of the 6-year trespass statute of limitations to §1981. The practical result would be that the statute of limitations will have been expanded from 1 year to 2 years by legislative amendment in January 1985 and then to 6 years by the Eleventh Circuit in June 1985.

[2/] Wilson v. Garcia, 471 U.S. ___, 85 L.Ed.2d 254, 107 S.Ct. 1938 (1985).

The 6-year statute of limitations is in direct contravention of the Federal labor policy of swift resolution of employment disputes. That policy is evidenced both by the time limits provided in Title VII of the 1964 Civil Rights Act and by the holdings of this Court on the statute of limitations for Federal labor laws when Congress chose to not include a statute of limitations.

ARGUMENT

A. THE PRESENT 2-YEAR STATUTE OF LIMITATIONS:

Lawsuits based on §1981 have consistently been subject to the statute of limitations governing general remedies for "any injury to the person or rights of another not arising from

contract and not specifically enumerated in this section."[8] Until January 1985, this limitations period was 1 year, which was extended by the Alabama Legislature in January 1985 to 2 years.[9]

There has never been any deviation from the application of this injury to the person or rights of another statute of limitations for §1981 cases since it was established as the applicable statute for §1981 in the early 1970's.[10]

Similarly, employment cases against public employers typically come to the courthouse based on the triad of

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[8] Ala. Code §6-2-39(a)(5), recodified as Ala. Code §6-2-38(1).

[9] Acts of Alabama of 1984, 2nd Exec. Sess., No. 85-30, Section 3, effective January 9, 1985.

[10] Buckner v. Goodyear Tire & Rubber Co., 339 F.Supp. 1108 (N.D. Ala. 1972), aff'd, 476 F.2d 1287 (5th Cir. 1973).

§1981, §1983, and Title VII, and consistency has existed by reason of the same statute of limitations on actions for any injury to the person or rights of another being applied to §1981 and §1983 alike.[11/]

This statute of limitations was expanded from 1 year to 2 years by the State Legislature in January 1985. Then in June 1985, the Eleventh Circuit rejected this statute for §1983 and instead selected the 6-year trespass statute.

A difference of opinion has already surfaced within the one Court which thusfar has considered whether the Supreme Court decision in Wilson means the same statute of limitations must be

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[11/] E.g., Dumas v. Town of Mount Vernon, 612 F.2d 974 (5th Cir. 1980); Williams v. City of Montgomery, 550 F.Supp. 662 (M.D. Ala. 1982), aff'd, 742 F.2d 586 (11th Cir. 1984), cert. denied, 105 S.Ct. 1756 (1985).

used for both §1981 and §1983. In Goodman v. Lukens Steel Co., 54 U.S.L.W. 2271 (3rd Cir. 1985), the majority opinion held that Wilson is to be interpreted as requiring application of the same statute of limitations for §1981 as is used for §1983, while the dissent argued that nothing in Wilson compels such a result. That debate will continue until resolved by the Supreme Court.[12/]

In the meantime, assuming extension of the Preuit & Mauldin precedent to §1981, defendants face the prospect of the §1981 statute of limitations having been extended from 1 year to 2 years in

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[12/] Both Courts and counsel would doubtless be grateful to have this Court provide guidance on the §1981-§1983 question as soon as possible, such as on review of the case sub judice.

January 1985 and again extended to 6 years in June 1985 by the Eleventh Circuit. The result is that defendants will be subjected to employment lawsuits concerning occurrences alleged to have taken place up to 6 years in the past.

B. THE ELEVENTH CIRCUIT DECISION IS CONTRARY TO THE POLICY OF SPEEDY RESOLUTION OF EMPLOYMENT CASES:

The principle that Federal Courts borrow the statute of limitations of the forum State when Congress has not provided a limitations period is subject to the premise that "A state law is not 'appropriate' if it fails to take into account practicalities that are involved in litigating federal civil rights claims and policies that are analogous to the goals of the Civil

Rights Act."[13/]

The reasons that the Eleventh Circuit's selection of the 6-year trespass statute is not appropriate include the conflict of this ruling with the policy of speedy resolution of employment disputes. This policy has been firmly established both by the time limits enacted by Congress and by judicial interpretations of laws for which Congress has not enacted a time limit.

1. Time limits enacted by Congress: In all of the Federal employment statutes for which Congress has provided time limits, the goal of

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[13/] Burnett v. Grattan, 468 U.S. ___, 104 S.Ct. 2930, 82 L.Ed.2d 36 (1984). See also Johnson v. Railway Express Agency, 421 U.S. 454, 465 (1974) ("considerations of state law may be displaced where their application would be inconsistent with the federal policy underlying the cause of action under consideration.").

speedy resolution is evident.

For example, this Court said with reference to Title VII in Mohasco Corp. v. Silver, 447 U.S. 807 (1980) that:

> "By choosing what are obviously quite short deadlines, Congress clearly intended to encourage the prompt processing of all charges of employment discrimination---."

Similarly, the Congressional desire for prompt resolution of employment cases is illustrated in such Federal statutes as the Age Discrimination in Employment Act and the National Labor Relations Act.[14/]

[14/] 29 U.S.C. § 626(d) (Age Discrimination in Employment Act gives 180 days for complaining party to file a charge with the Equal Employment Opportunity Commission); 29 U.S.C. § 160(b) (National Labor Relations Act provides a 6 months time limit); 5 U.S.C. § 7118(a)(4)(A) (complaint to Federal Labor Relations Authority about an unfair labor practice must be within six months); 5 C.F.R. §§ 1201.22(b), 1201.154(a)(1) (Appeals to the Merit Systems Protection Board over an agency action must be filed within 20 days); 29 U.S.C. § 255(a) (Equal Pay Act has a 2 or 3 year statute of limitations).

2. Judicial interpretations of statutes without a statute of limitations: This Court, when considering the choice of statutes of limitations for Federal employment cases for which Congress has not enacted a time limit, has repeatedly favored and adopted the statute of limitations which effectuates the policy of swift resolution of employment claims.

For instance, in Del Costello v. International Brotherood of Teamsters, 462 U.S. 151 (1983), the Court held that the 6 month time limit provided by the National Labor Relations Act,[15] should be the applicable statute of limitations on claims against the Employer under the Labor Management Relations Act and the Union on the fair representation duty theory. In so holding, the Court stated:

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[15] 29 U.S.C. §160(b).

> "[W]hile application of a short arbitration period as against employers would endanger employees' ability to recover most of what is due them, application of a longer malpractice statute as against unions would preclude the relatively rapid final resolution of labor disputes favored by federal law."

3. Goals served by the rapid resolution of employment cases: The Courts have emphasized the goals served by the rapid resolution of employment cases. In Delaware State College v. Ricks, 449 U.S. 250 (1980), where the plaintiff sued under §1981 and Title VII, the Court pointed out that:

> "The limitations periods, while guaranteeing the protection of the civil rights laws to those who promptly assert their rights, also protect employers from the burden of defending claims arising from employment decisions that are long past."

Similarly, the reasons for the rapid disposition of employment cases was recently explained in Smith v. City of Chicago, 769 F.2d 408 (7th Cir.

1985). In that case, the Court pointed to the Supreme Court's instruction that "reasonably short periods should be borrowed in employment cases"[16] and explained that:

> "Litigation about hiring, firing, and the assignment of work has more urgency about it. If a person is fired, someone else is likely to be given the work. Litigation may require the employer to pay twice for the same work, as the Supreme Court emphasized in Arant, supra, 249 U.S. at 372, 39 S.Ct. at 294. If the litigation also produces an order to reinstate a wronged employee, or to hire a wronged applicant for work, this may cause loss to other innocent employees. See Franks v. Bowman Transportation Co., 424 U.S. 747, 96 S.Ct. 1251, 47 L.Ed. 2d 444 (1976); International Brotherhood of Teamsters v. United States, 431

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[16] As the Court said:

> "United Parcel Service, Inc. v. Mitchell, 451 U.S. 56, 101 S.Ct. 1559, 67 L.Ed.2d 732 (1981), and DelCostello hold that reasonably short periods should be borrowed in employment cases and reject arguments for use of the statute of limitations for enforcing contracts. The reasons the Court gives in Mitchell and DelCostello apply here as well."

> U.S. 324, 97 S.Ct. 1843, 52 L.Ed.2d 396 (1977). Disputes of this sort should be filed quickly and litigated briskly in order to hold to a minimum unnecessary loss to employer and other employees--loss that ultimately must lead to lower wages for all employees."

The loss of speed and economy from a long 6-year statute of limitations is obvious. Employment grievances that are not even filed for 6 years are bound to create industrial unrest and the unreliability of evidence clouded by faded memories, personnel changes, and death. That cannot be reconciled with this Court's observation in Wilson that "Just determinations of fact cannot be made when, because of the passage of time, the memories of witnesses have faded or evidence is lost."

Furthermore, the decision below is virtually certain to produce an

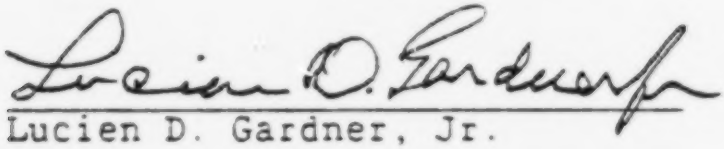
increase in case-filings as persons whose claims were barred now attempt to revive them by reliance on the expansion of the statute of limitations to 6 years under the Eleventh Circuit's decision. It has recently been held that "the interests of section 1983 are best served by a retroactive application of Wilson to extend the statute of limitations time period." Rivera v. Green, ___ F.2d _____ (9th Cir. 1985). Assuming continued acceptance of this retroactivity view, there is every reason to expect that the Federal Courts in Alabama (and elsewhe e) will be receiving lawsuits on matters which had been considered disposed of by repose long ago.

CONCLUSION

It is respectfully submitted that the decision of the Court of

Appeals for the Eleventh Circuit will have a significant adverse impact on employers both in Alabama and in all States with similar trespass statutes of limitations, that it is contrary to the Federal labor policy of speedy resolution of employment cases, and that the Court should grant the Petition for a Writ of Certiorari and correct the error by the Eleventh Circuit.

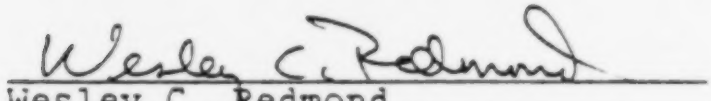
Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that the above and foregoing brief for Associated Industries of Alabamahas been served by United States mail, postage prepaid, on:

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This the 4th day of December, 1985.

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